

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Asselman	Team: Squad #4	CCRB Case #: 202200580	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/25/2022 11:20 PM	Location of Incident: Mapes Avenue and East 181st Street	Precinct: 48	18 Mo. SOL 7/25/2023	EO SOL 7/25/2023	
Date/Time CV Reported Tue, 01/25/2022 11:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 01/28/2022 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Kieran Brennan	30990	965958	PBBX SU PST
2. PO Anthony Saline	12924	962081	PBBX SU PST
3. SGT DS Erik Duran	01423	948476	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan stopped § 87(2)(b)	
B. PO Anthony Saline	Abuse: Police Officer Anthony Saline stopped § 87(2)(b)	
C. SGT DS Erik Duran	Abuse: Sergeant Erik Duran stopped § 87(2)(b)	
D. PO Kieran Brennan	§ 87(2)(a) CVR § 50-b	
E. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan frisked § 87(2)(b)	
F. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan searched § 87(2)(b)	
G. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan refused to provide his name to § 87(2)(b)	
H. PO Anthony Saline	Abuse: Police Officer Anthony Saline refused to provide his name to § 87(2)(b)	
I. SGT DS Erik Duran	Abuse: Sergeant Erik Duran refused to provide his name to § 87(2)(b)	
J. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan refused to provide his shield number to § 87(2)(b)	
K. PO Anthony Saline	Abuse: Police Officer Anthony Saline refused to provide his shield number to § 87(2)(b)	
L. SGT DS Erik Duran	Abuse: Sergeant Erik Duran refused to provide his shield number to § 87(2)(b)	
M. PO Kieran Brennan	Abuse: Police Officer Kieran Brennan failed to provide § 87(2)(b) with a business card.	
N. PO Anthony Saline	Abuse: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.	
O. SGT DS Erik Duran	Abuse: Sergeant Erik Duran failed to provide § 87(2)(b) with a business card.	

Case Summary

This complaint was filed on January 25, 2022, at IAB via telephone. The reference log number is #22-1995.

On January 25, 2022, PO Kieran Brennan, PO Anthony Saline, Sergeant Erik Duran of Patrol Borough Bronx stopped § 87(2)(b) near the intersection of 181st Street and Mapes Avenue in The Bronx (**Allegation A: Abuse of Authority,** § 87(2)(g) **Allegation B: Abuse of Authority,** § 87(2)(g) **Allegation C: Abuse of Authority,** § 87(2)(g) PO Brennan placed his hand between § 87(2)(b)'s pants and belt area (**Allegation D: Abuse of Authority,** § 87(2)(g) § 87(2)(g) patted down the front pockets of his jacket (**Allegation E: Abuse of Authority,** § 87(2)(g) § 87(2)(g) and searched his pocket (**Allegation F: Abuse of Authority,** § 87(2)(g) PO Brennan, PO Saline, and Sgt. Duran then refused to provide their names and shield numbers to § 87(2)(b) (**Allegations G through L: Abuse of Authority,** § 87(2)(g) § 87(2)(b) did not obtain a RTKA business card from PO Saline, PO Brennan, or Sgt. Duran, (**Allegations M through O: Abuse of Authority,** § 87(2)(g) § 87(2)(b)

This incident resulted in no arrests or summonses being issued. Stop Report #2022-048-000033 was prepared by PO Brennan, in relation to this incident (Board Review 17).

The CCRB obtained BWC footage of this incident (Board Review 01, 02, 03).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kieran Brennan stopped § 87(2)(b)
Allegation (B) Abuse of Authority: Police Officer Anthony Saline stopped § 87(2)(b)
Allegation (C) Abuse of Authority: Sergeant Erik Duran stopped § 87(2)(b)

On January 25, 2022, at approximately 11:08pm, § 87(2)(b) was walking in the vicinity of 181st Street and Mapes Avenue in The Bronx (Board Review 04). § 87(2)(b) was holding his phone in his hand, inside his right jacket pocket. He had his left hand inside his left jacket pocket. § 87(2)(b) noticed a vehicle drive slowly near him. § 87(2)(b) knew that the vehicle was possibly occupied by police officers, but because it was dark in the area, he was unable to see clearly. The vehicle stopped and the window was lowered, and PO Brennan said, “Hey.” § 87(2)(b) said, “Am I under suspicion of committing a crime?” PO Brennan exited the vehicle and approached § 87(2)(b) PO Saline and Sgt. Duran exited the vehicle next. PO Brennan stood facing § 87(2)(b) PO Saline stood to his left and Sgt. Duran to his right. When he asked why he was stopped, PO Brennan told him that he was in a shooting prone neighborhood. § 87(2)(b) added that during this encounter, he was scared due to his dark brown skin, and he did not “want to become another story.”

In BWC footage recorded by PO Saline, at approximately 00:26, and before the audio begins, PO Saline is driving a vehicle and PO Brennan is in the front passenger seat. § 87(2)(b) can be seen through the vehicle’s passenger side window walking and looking in the vehicle’s direction. The distance between the vehicle and PO Saline does not clearly depict whether § 87(2)(b) took any actions or made any other movements other than walking. It depicts § 87(2)(b) looking in the vehicle’s direction as it comes to a stop, at approximately 00:38. This video’s audio begins at 00:59; it does not conclusively show whether § 87(2)(b) received any commands to stop, before the officers approached him.

PO Brennan testified that on the date of this incident, he was assigned to patrol the area where it occurred, due to high numbers of violent crimes and shootings (Board Review 05). He is often assigned to this neighborhood because of an increase in incidents involving firearms. PO Brennan observed § 87(2)(b) from across the street, approximately twenty feet away. § 87(2)(b) was walking at a “normal pace.” § 87(2)(b) looked in PO Brennan’s direction then quickened his pace, hunched over, and looked back behind him approximately five or six times. § 87(2)(b) placed his left hand in his left-hand jacket pocket. It appeared that § 87(2)(b) was clutching an object in his right hand and moving it inside the jacket pocket. PO Brennan did not provide additional reasons for stopping § 87(2)(b). PO Brennan did not recall whether it was he who made the decision to stop § 87(2)(b) or he, PO Saline, and Sgt. Duran made the decision collectively. PO Brennan did not recall whether an incident involving firearms occurred in the area on the date of this incident. PO Brennan stopped § 87(2)(b) to investigate the observations he made and to determine whether § 87(2)(b) did in fact have a firearm.

PO Saline testified that he, PO Brennan, and Sgt. Duran observed § 87(2)(b) from inside their unmarked vehicle, looking back over his shoulder (Board Review 06). PO Saline looked in the vehicle’s direction, quickened his pace and frequently looked back over his shoulder. After they drove close to him, § 87(2)(b) grasped an object inside his left jacket pocket. PO Saline testified that it was PO Brennan who saw this object and was unable to describe it. PO Saline did not recall which of the officers made the decision to stop § 87(2)(b).

Sgt. Duran said to the CCRB that he was supervising PO Brennan and PO Saline from the backseat of an unmarked NYPD vehicle, near the location of this incident, which is known to have a high level of violence and shootings (Board review 07). Typically, he looks for individuals who change their behavior when noticing the police and individuals with bulges that look like firearms. Sgt. Duran did not recall which of the officers inside the vehicle saw § 87(2)(b) first. He saw § 87(2)(b) quicken his pace when he noticed the unmarked vehicle. Sgt. Duran added that although the vehicle was unmarked, § 87(2)(b) could have recognized its occupants as NYPD officers because the windows were down, and their NYPD uniforms were visible. § 87(2)(b) had an object in his pocket which created a bulge. Sgt. Duran did not recall what shape the bulge was, but he compared it to his own flashlight, which is a narrow cylinder. § 87(2)(b) grasped this object inside his pocket when he noticed the officers. The officers made the decision to stop § 87(2)(b) collectively.

People v. DeBour, 40 N.Y.2d 210 (1976), states that officers must have reasonable suspicion that a person has committed, is committing or is about to commit a felony or misdemeanor in order to stop that person (Board Review 08).

New York v. Hollman, 79 N.Y.2d 181 (1992), states that “It is certainly unsettling to be approached by a police officer” and “that a reasonable person would [...] be taken aback by such a request.” Merely acting suspiciously does not give rise to a more intrusive police inquiry based on the four-tiered DeBour method (Board review 09).

People v. Powell, 246 A.d.2d 366 (1998), states that behaviors that are readily susceptible to an innocent interpretation, may not generate a founded suspicion of criminality. Additionally, that this may have been a high-crime area does not validate a search since no other objective indicia of criminality existed to supply the requisite reasonable suspicion for the forcible stop and frisk (Board Review 10).

People v. Jones, 164 A.D.3d 1363 (2018), states that a bulging jacket pocket is not indicative of criminality, as a pocket bulge, in contrast to a waistband bulge, could be caused by an innocuous object (Board review 11).

Although PO Brennan, PO Saline, and Sgt. Duran all testified that § 87(2)(b) quickened his pace, placed his hands in his pockets and looked behind him repeatedly, the BWC evidence obtained by the CCRB did not clearly depict § 87(2)(b) taking these actions. They each testified that the area where § 87(2)(b) was walking had a high level of firearm-related incidents. Additionally, Sgt. Duran testified that he saw a bulge in § 87(2)(b)'s jacket pocket but the description which he provided is insufficient to determine whether it resembled a firearm or any other weapon. § 87(2)(g)

§ 87(2)(a) CVR § 50-b

Allegation (E) Abuse of Authority: Police Officer Kieran Brennan frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Kieran Brennan searched § 87(2)(b)

§ 87(2)(a) CVR § 50-b

PO Brennan then patted down § 87(2)(b)'s front pants pockets and reached inside his left and right jacket front pockets, with his left and right hands, respectively.

In BWC footage recorded by PO Brennan, at 00:51, PO Brennan extends his right hand between § 87(2)(b)'s left arm and his torso and takes hold of § 87(2)(b)'s wrist and pulls his hand out of his pocket. PO Brennan's hand does not appear to enter § 87(2)(b)'s pocket. § 87(2)(b)'s hand does not appear to be holding any objects. § 87(2)(b) is holding a cellphone in his right hand. PO Brennan then briefly lifts the portion of § 87(2)(b)'s jacket near the front zipper. § 87(2)(a) CVR § 50-b, § 87(2)(b)

. It does not depict whether § 87(2)(b) was given verbal commands to remove his hands from his pockets.

The BWC footage recorded by PO Saline does not depict an angle that shows the frisk actions taken by PO Brennan.

PO Brennan approached § 87(2)(b) and immediately removed his left hand from his left pocket by grasping his forearm. He also patted the fronts of his jacket pockets and the front waistband area. PO Brennan did not pat down or enter any additional areas of § 87(2)(b)'s body or clothing. He

§ 87(2)(a) CVR § 50-b

PO Saline testified that § 87(2)(b) was given multiple commands to remove his hand from his pocket, with which he did not comply. PO Brennan removed § 87(2)(b)'s hand from his jacket pocket and frisked the area by patting it from the outside. He denied seeing PO Brennan enter any

of § 87(2)(b)'s pockets. § 87(2)(a) CVR § 50-b

During this stop, Sgt. Duran paid special attention to the ground near where § 87(2)(b) walked because he may have dropped possessions after noticing police officers. Sgt. Duran then heard PO Brennan say to § 87(2)(b) "Stop pulling away from me." He then walked towards § 87(2)(b) because PO Brennan's statement made him fear for his, PO Brennan's, and PO Saline's safety. Sgt. Duran saw PO Brennan remove § 87(2)(b)'s hand from, then frisk, his pocket. Sgt. Duran did not recall if PO Brennan took any other action to make sure that § 87(2)(b) did not have any weapons. Sgt. Duran did not frisk or search § 87(2)(b) § 87(2)(a) CVR § 50-b

People v. DeBour, 40 N.Y.2d 210 (1976), states that officers may frisk a stopped individual if they reasonably suspect that the person is armed. However, it also states that innocuous behavior alone does not generate a founded, reasonable suspicion that a crime is at hand.

People v. Howard, 147 A.D.2d 177 (1989), states that officers may frisk an individual when they reasonably suspect that they are in danger of physical injury by virtue of the detained person being armed. It clarifies that a bulging jacket pocket is not sufficient as a basis for a frisk or search for a gun (Board Review 12).

§ 87(2)(a) CVR § 50-b

It is undisputed that PO Brennan frisked § 87(2)(b)'s front jacket pockets.

§ 87(2)(g)

Only Sgt. Duran testified to the CCRB that he feared for his safety, because he heard PO Brennan say to § 87(2)(b) to stop pulling away from him and Sgt. Duran did not provide any additional reasons for fearing for his and his team's safety. § 87(2)(g)

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Kieran Brennan refused to provide his name to § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Anthony Saline refused to provide his name to § 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant Erik Duran refused to provide his name to § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Kieran Brennan refused to provide his shield number to § 87(2)(b)

Allegation (K) Abuse of Authority: Police Officer Anthony Saline refused to provide his shield number to § 87(2)(b)

Allegation (L) Abuse of Authority: Sergeant Erik Duran refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) said to PO Brennan, PO Saline, and Sgt. Duran simultaneously, “May I have you guys’ badge, officers?” The officers looked at § 87(2)(b) but did not respond. § 87(2)(b) added that he repeated the officers’ names to himself, after reading them on their name tags, so he could remember them.

In BWC footage recorded by PO Saline, at approximately 01:00 § 87(2)(b) says, “Officer Saline and Officer Duran. OK. What precinct are you from? What’s your precinct?” PO Duran and PO Saline speak simultaneously making their responses inaudible. PO Saline and PO Duran can be heard saying “Borough” and “We’re in the 48th Precinct right now.” PO Saline says, “Thank you sir. Do you understand why you were stopped?” § 87(2)(b) says, “No, 48th precinct? Saline, Duran. And who’s the commanding officer here? Who’s the commanding officer here?” PO Saline says, “Do you want to understand why you were stopped?” § 87(2)(b) says, “Who... 48th Precinct? Saline? Saline and Duran,” while appearing to look at PO Saline and PO Duran’s shields. At 02:16, § 87(2)(b) repeats PO Saline and Sgt. Duran’s names. PO Saline says, “Goodnight. Do you need a card or anything like that?” § 87(2)(b) speaks inaudibly as he walks away.

PO Brennan testified that § 87(2)(b) asked him, PO Saline, and Sgt. Duran for their names and shield numbers. All three officers provided this information. Further, PO Saline offered § 87(2)(b) a business card, but he walked away.

PO Saline did not recall whether § 87(2)(b) asked him, PO Brennan, and Sgt. Duran for their names and shield numbers. He heard § 87(2)(b) repeat his name and Sgt. Duran’s.

Sgt. Duran heard § 87(2)(b) say, “Officer Saline, Officer Duran.” He added that he showed § 87(2)(b) his name and shield number on his uniform. He did not recall whether § 87(2)(b) asked each of them directly for their names and shield numbers. PO Saline then offered § 87(2)(b) a business card, but § 87(2)(b) ignored him and walked away.

Although the BWC footage obtained does not depict § 87(2)(b) asking the officers directly for their names and shield numbers, it does show him repeat PO Saline and Sgt Duran’s names. However, the audio in this footage does not begin until the 01:00 timestamp, meaning the conversation between the officers and § 87(2)(b) during the preceding fifty-nine seconds is inaudible. § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation (M) Abuse of Authority: Police Officer Kieran Brennan failed to provide § 87(2)(b) with a business card.

Allegation (N) Abuse of Authority: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.

Allegation (O) Abuse of Authority: Sergeant Erik Duran failed to provide § 87(2)(b) with a business card.

While providing the information listed in the CCRB Confidential Witness Information Sheet, § 87(2)(b) said he did not receive a business card from either PO Saline, PO Brennan, or Sgt. Duran (Board Review 18).

The BWC footage recorded by PO Saline shows that § 87(2)(b) walked away from PO Brennan, PO Saline, and Sgt. Duran before obtaining a business card from any of the three officers (Board Review 01, 02). The same footage shows that at 02:19, PO Saline asks § 87(2)(b) “Do you need a card or anything like that?” § 87(2)(b)’s response is inaudible, and he appears to walk away.

PO Saline testified that during this incident, he offered § 87(2)(b) a business card, but § 87(2)(b) did not take it.

Sgt. Duran’s testimony was materially similar to PO Saline’s.

Administrative Guide Procedure 304-11 states that when an enforcement action such as a frisk (level 3 encounter) is concluded, and does not result in a summons or arrest, a member of the service must provide a business card to members of the public, in accordance with the Right to Know Act (Board Review 19).

It is undisputed that § 87(2)(b) did not obtain a business card at the conclusion of his encounter with PO Brennan, PO Saline, and Sgt. Duran. The video evidence obtained shows that by the time PO Saline offered § 87(2)(b) a business card, § 87(2)(b) had already begun walking away from the three officers. Though § 87(2)(b) did not explicitly refuse the business card, he did not provide PO Saline, PO Brennan, or Sgt. Duran the opportunity to provide their business cards. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- Sgt. Duran has been a member of service for twelve and has been a subject in five CCRB complaints and fourteen allegations, none of which were substantiated (Board Review 14). Sgt. § 87(2)(g)
- PO Saline has been a member of service for six years and has been a subject in eleven CCRB complaints and thirty-eight allegations, of which nine were substantiated. § 87(2)(g)
 - 202002202 involved five substantiated allegations against PO Saline (**Abuse of Authority: Failure to Provide RTKA card,**) (**Abuse of Authority: Frisk,**) (**Abuse of Authority: Refusal to Provide Shield Number,**) (**Abuse of Authority: Refusal to Provide Shield Number,**) (**Abuse of Authority: Stop.**) The Board recommended Charges (Board Review 14).
 - 2020003354 involved three substantiated allegations against PO Saline, (**Abuse of Authority: Failed to Obtain Language Interpretation,**) (**Abuse of Authority: Failure to**

Provide RTKA Card,) (Abuse of Authority: Failure to Provide RTKA Card.) The Board Recommended Command Discipline B (Board Review 14).

- PO Brennan has been a member of service for four year and has been a subject in six CCRB complaints and twenty-nine allegations, of which one was substantiated.:
 - 202002279 involved substantiated allegations of Abuse of Authority against PO Brennan. The Board recommended Formalized Training (Board Review 14).

Mediation, Civil, and Criminal Histories

- The CCRB did not offer mediation at the time of this complaint.
- As of June 15, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (Board Review 15).
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)

Squad: #4

Investigator:	<u> Sara Asselman </u>	<u> Inv. Sara Asselman </u>	<u> 12/30/2022 </u>
	Signature	Print Title & Name	Date

Squad Leader:	<u> Raquel Velasquez </u>	<u> IM Raquel Velasquez </u>	<u> 12/30/2022 </u>
	Signature	Print Title & Name	Date

Reviewer:	<u> </u>	<u> </u>	<u> </u>
	Signature	Print Title & Name	Date